

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NOVARTIS PHARMACEUTICALS
CORPORATION

Plaintiff,

v.

ACCORD HEALTHCARE, INC., et al.,

Defendants.

C.A. No. 18-1043-LPS

REDACTED - PUBLIC VERSION

PUBLIC VERSION FILED - December 18, 2019

[PROPOSED] CONSENT JUDGMENT AND ORDER OF INJUNCTION

WHEREAS, Plaintiff Novartis Pharmaceuticals Corporation (“Novartis”) and Defendants Biocon Limited and Biocon Pharma, Inc. (collectively, “Biocon”), have agreed to terms and conditions representing a negotiated settlement of this action, have set forth those terms and conditions in a confidential Settlement and License Agreement (the “Settlement Agreement”), and have stipulated and consented to entry of this Consent Judgment and Order of Injunction;

WHEREAS, Biocon stipulates and acknowledges that, for the purposes of this action only, all claims of United States Patent No. 9,187,405 (“the ’405 Patent”) asserted in this action against each of them are valid and enforceable; and

WHEREAS, Biocon stipulates and acknowledges that, for the purposes of this action only, the use, sale, offer for sale, manufacture, and/or importation of the accused product (the subject of Abbreviated New Drug Application No. 207979 only) infringes all claims of the ’405 Patent asserted in this action.

IT IS HEREBY ORDERED, DECREED, AND ADJUDGED:

1. Judgment is entered that the accused product (the subject of Abbreviated New Drug Application No. 207979 only) infringes all claims of the '405 Patent asserted against Biocon in this action.
2. By virtue of the license granted by Novartis to Biocon as part of the Settlement and License Agreement, judgment is entered that there no longer exists a cause of action for infringement of the '405 Patent by the accused product (the subject of Abbreviated New Drug Application No. 207979).
3. This Consent Judgment constitutes a "consent decree" pursuant to 21 U.S.C. § 355(j)(5)(B)(iii)(I)(bb), such that Final Approval of Biocon's Abbreviated New Drug Application No. 207979 under 21 U.S.C. § 355(j)(2)(A)(vii)(IV) may be granted on the date that this Consent Judgment is entered.
4. Pursuant to the terms of the Settlement and License Agreement, all other claims and counterclaims are dismissed WITH PREJUDICE.
5. This Court retains jurisdiction over all disputes arising out of the Settlement and License Agreement.
6. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
7. The injunction described in the foregoing paragraph shall take effect immediately upon entry of this Order by the Court.

8. During the term of the injunction, the Court retains jurisdiction over this action, including implementation of, or disputes arising out of, this Order of Injunction.
9. Each Party shall each bear its and their own costs and attorney fees.
10. Novartis and Biocon each expressly waive any right to appeal or otherwise move for relief from this Consent Judgment and Order of Injunction.

MCCARTER & ENGLISH, LLP

/s/ Daniel M. Silver

Michael P. Kelly (#2295)
Daniel M. Silver (#4758)
Alexandra M. Joyce (#6423)
Renaissance Centre
405 N. King Street, 8th Floor
Wilmington, DE 19801
(302) 984-6300
mkelly@mccarter.com
dsilver@mccarter.com
ajoyce@mccarter.com

Jane M. Love
Robert Trenchard
Paul E. Torchia
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166
(212) 351-4000
jlove@gibsondunn.com
rtrenchard@gibsondunn.com
ptorchia@gibsondunn.com

Andrew P. Blythe
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7000
ablythe@gibsondunn.com

Attorneys for Novartis Pharmaceuticals Corporation

PHILLIPS, GOLDMAN, MCLAUGHLIN & HALL, P.A.

/s/ John C. Phillips, Jr.

John C. Phillips, Jr. (#110)
Megan C. Haney (#5016)
1200 North Broom Street
Wilmington, DE 19806-4204
(302) 655-4200
jcp@pgmhlaw.com
mch@pgmhlaw.com

OF COUNSEL:

Stephen P. Benson
Kimberly A. Beis
KATTEN MUCHIN ROSENMAN LLP
525 W. Monroe St.
Chicago, IL 60661
(312) 902-5200
stephen.benson@kattenlaw.com
kimberly.beis@kattenlaw.com

Attorneys for Biocon Limited, Biocon Pharma, Inc.

IT IS SO ORDERED this _____ day of _____, 2019.

Chief United States District Judge
Hon. Leonard P. Stark